

Office of the Yavapai County Attorney

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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 SEP -2 PM 5:01 ✓

JEANNE HICKS, CLERK

BY: C. Flick

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

CR 2008-1339

Plaintiff,

Division 6

v.

STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR REEXAMINATION OF
CONDITIONS OF RELEASE

STEVEN CARROLL DEMOCKER,

Defendant.

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion for Reexamination of Conditions of Release and request for Evidentiary Hearing on the matter. As held in *Mendez v. Robertson*, 202 Ariz. 128, 42 P.3d 14 (App. 2002), a defendant is not entitled to an evidentiary hearing on a Motion for Reexamination; therefore, Defendant's request on that issue should be denied. Defendant's Motion for Reexamination of Conditions of Release should be denied because Defendant has failed to offer any material fact not previously considered by this Court.

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1 **ARGUMENT:**

2 ***Defendant's Conditions of Release should not be amended.***

3 *Ariz. R. Crim P.*, Rule 7.4(b) provides that "[a]ny person remaining in custody may
4 move for reexamination of the conditions of release whenever the person's case is transferred
5 to a different court ***or the motion alleges the existence of material facts not previously***
6 ***presented to the court.***" (emphasis added.) A "material fact" is defined as "a fact that is
7 significant or essential to the issue or the matter at hand." *Black's Law Dictionary*, 484 (7th
8 abridged ed. 2000). Defendant claims his material facts are: 1) availability of GPS
9 monitoring, 2) the strength of the State's evidence, and 3) Defendant's inability to assist in
10 his defense due to his incarceration.

12 During December 2008 and January 2009, this Court heard nearly four full days of
13 testimony regarding the State's request to hold Defendant without bond. In addition, this Court
14 twice heard additional testimony and argument regarding the State's evidence as it was
15 presented to the grand jury during the hearings on Defendant's two motions for new finding of
16 probable cause. This Court also heard argument regarding GPS monitoring at a hearing on
17 March 10, 2009.

19 This Court found that Defendant had the opportunity to commit the crimes based upon
20 Defendant's proximity to the scene, the time frame in which the murder occurred, and
21 Defendant's lack of alibi. After consideration, this Court determined that \$2,500,000.00 cash
22 or security bond was appropriate.

24 After the ruling was issued, Defendant quickly filed a Motion for Reexamination of
25 Conditions of Release which was denied by this Court without evidentiary hearing on April 30,
26

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1 2009. Defendant's current Motion for Reexamination of Conditions of Release is little more
2 than a carbon copy of his earlier request.

3 The State's evidence was fully considered by this Court during both the *Simpson*
4 Hearing and the hearings for new finding of probable cause. The fact that the State's evidence
5 has not substantially changed is not a new material fact for the purpose of Defendant's request
6 for reexamine conditions of release. In fact, Defendant's only "new" allegation is that the
7 conditions of his confinement *might* prevent him from assisting with his own defense;
8 however, this allegation is based upon pure speculation and speculation as to what may or
9 may not occur in the future should not be allowed to stand as a "material fact" to warrant the
10 reexamination of the conditions of release.

11
12 The State has made and will continued to make arrangements to provide Defendant
13 with a secure room, the ability to video conference, a secure telephone line, as well as a
14 secure computer to allow him to review the evidence and assist his defense team for a period
15 of at least forty hours per week as this case proceeds to trial. Clearly, Defendant has failed to
16 present any instance where his incarceration has prevented him from meaningfully assisting
17 in his own defense.

18
19 **CONCLUSION:**

20 Defendant failed to present the existence of any material facts not previously
21 presented to this Court as to warrant a Reexamination of Release Conditions. Defendant's
22 Motion for Reexamination of Conditions of Release and Request for Evidentiary Hearing on
23 the matter should be denied.
24

25 ///

26 ///

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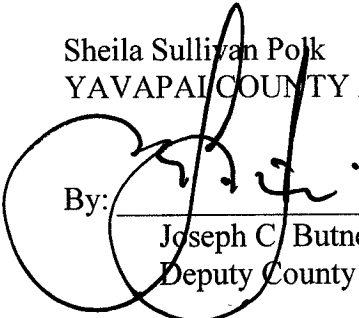
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RESPECTFULLY SUBMITTED this 2d September, 2009.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: 
Joseph C. Butner
Deputy County Attorney

COPIES of the foregoing delivered this
2 day of September, 2009 to:

Honorable Thomas J. Lindberg
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Yavapai County Superior Court
(via email)

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